



**CALIFORNIA
HIGH-SPEED RAIL
AUTHORITY**

BRIEFING: JUNE 2, 2010 EXECUTIVE / ADMINISTRATIVE COMMITTEE MEETING
AGENDA ITEM #4

TO: Chairman Pringle and Authority Board Members

FROM: Steve Schnaidt

DATE: 6/1/10

RE: Legislation Update

Background

The Authority's staff regularly presents an information/action item summarizing high-speed train-related legislation introduced and pending in the current legislative session. In 2009, the first year of the 2009-10 Legislative Session, ten (10) bills were identified at one time or another as directly affecting or having the potential to affect in different ways the high-speed train project or related intercity passenger rail operations.

The initial 2009-10 legislative report noted that the Authority likely would be asked for its views, if any, on the various measures as the bills were scheduled for legislative policy and fiscal hearings and began their progress through the legislative process. The April 2009 and subsequent monthly reports highlighted and updated the provisions of the bills relevant to the high-speed train project and recommended to the Board for its consideration, formal positions on several bills. The report also recommended that the Board continue to monitor the status and progress of the identified bills whether or not a formal position was adopted. After discussion at its May meeting, the Board approved the staff report's recommended positions and action on several bills and directed staff to keep board members informed of important changes and developments in the language or status of the bills.

The Legislature is now far into the calendar for consideration and action on legislation this year. The essential deadlines and dates remaining in the legislative calendar for 2010 are the following:

- June 1-4: Floor sessions only. Committees may not meet (unless waiver is granted).
- June 4: Last day to pass bills in house of origin (Assembly bills must clear the Assembly; Senate bills must clear the Senate).
- June 7: Committee meetings may resume (to hear other-house bills or same-house bills with deadline waivers)
- June 15: Constitutional deadline for passage of the Budget Bill.
- July 2: Last day for policy committees to report bills (generally those from the other house). Summer Recess begins (through August 2), if Budget has been enacted.
- August 13: Last day for fiscal committees to meet and report bills to the Floor.
- August 16-31: Floor session only. Committees may not meet unless granted a waiver to do so.
- August 31: Last day for any bill to be passed. Final Recess for 2009-10 session begins at day's end.
- September 30: Last day for Governor to sign or veto bills.

Discussion

The Assembly and Senate are very active at this time with final house-of-origin work on pending legislation. As the legislative schedule indicates, bills must receive final consideration and approval by the respective houses of origin by the June 4, 2010 Assembly/Senate deadline; legislation that does not clear its house of origin by that date cannot be considered by the other house or be enacted this year or the 2009-10 Session (unless rule waivers of deadlines or some other extraordinary legislative action is taken).

The high volume of house-of-origin action on pending legislation during the week of the Authority's June 2-3 committee and Board meetings, respectively, makes it likely that the status of some measures included in this report will have changed from that reported despite this report being updated 6/1/10.

Restructuring Proposals: At the May 6, 2010 meeting of the Authority, Board members discussed several "restructuring" bills that would substantially alter the structure or membership of the Authority or its place in state government. The Board requested the preparation of a draft letter addressed to the authors of pending legislation that, if enacted, would alter the structure or membership of the Authority. Staff was instructed to communicate in the letter the willingness of the Authority to join in discussions of change over a longer time horizon, but to make clear the reservations and concerns of Board members with making substantial changes in the structure or operations of the Authority at this time and that the Board was not in favor of pending legislation that would do so. A draft letter is being prepared for review and discussion by members of the Authority.

Recommendations:

Authority staff propose that the Authority continue its prior approved positions on specific high-speed train legislation that has not changed, and consider whether to take positions on new legislation or revised positions on measures that have been substantially altered, as indicated. Staff recommends that the Authority instruct the Chief Executive Officer to communicate any new or changed Board positions to the appropriate committees and respective authors of the bills as necessary. If there are no proposed additions or changes, then no further Committee or Board action is necessary:

1. **AB 153 (Ma)** – *Operations and duties of the High Speed Rail Authority - Successor legislation to the Authority-sponsored AB 981 (Ma, 2007, later used for other issues).*

The bill deletes language made obsolete by the passage of AB 3034 (Prop. 1A) last year regarding a financial plan and makes several technical and clarifying changes to statutes governing the powers duties of the Authority (for example, makes a technical, clarifying reference that the Board is the “governing authority” of the Authority in cases of eminent domain, clarifies that the Authority’s existing eminent domain powers exempt the Authority from having to rely on the state Public Works Board to acquire property, and deletes obsolete contingency language and updates provisions requiring the Authority to prepare construction plans for the HST system). The bill also provides that the Authority may hire its own legal counsel (and continue to use the services of the Attorney General, or both), similar to provisions for the California Transportation Commission.

Bill history/status: Approved by Assembly Transportation Committee on 3/23/09, 9-0; approved by Assembly Judiciary Committee 7-2 on 4/14/09; approved by Assembly Appropriations Committee 11-5 on 4/29/09; approved by Assembly 53-16 on 5/11/09. Sent to Senate; double-referred to Transportation and Housing and Judiciary Committees. Set for hearing in Transportation and Housing on 6/23/09; put over/postponed to later hearing by Committee, with proposed committee amendments presented to the author. No new hearing scheduled. Two-year bill.

Current approved position: As sponsor of the bill, request that author cease further efforts to secure passage of the measure at this time. (A July 20, 2009 letter was sent to author requesting this.)

2. **AB 289 (Galgiani) As amended 5/28/10** – *States legislative intent to appropriate bond funds in the 2010-11 Budget Act to match federal ARRA funds and requires that the Proposition 1A preappropriation review process for state bond funds also to apply to federal ARRA funds. Requires the HSRA to work with the FRA to create an expenditure plan for ARRA funds. Revises and recasts provisions requiring a biennial business plan and the provisions establishing a peer review group, establishes the Office of Project Controls and Risk Management within the Authority and creates an inspector general appointed by the Governor to oversee fiscal functions of the Authority. Extends the State Auditor’s audit functions to the use of ARRA funding.*

Authorizes the Governor to appoint five additional exempt employees to the Authority to serve as its executive staff.

Proposition 1A (AB 3034), the Safe, Reliable High-Speed Passenger Train Act for the 21st Century, was approved by state voters on November 4, 2008. Prop. 1A controls the expenditure of the bond funds and imposes conditions on the use of the funds for development and construction of the high-speed train (HST) project, including that no more than 50% of the construction cost in any corridor or usable segment can come from the bond funds. Prop. 1A also requires the Authority to pursue and obtain other private and public funding, including federal funding for the HST project. Separately, the revised 2009-10 Budget Act appropriation for the Authority provides that the state appropriation for the Authority's operating and project expenses may be reduced and replaced (substituted) by an equivalent amount of any federal stimulus funds made available through the American Recovery and Reinvestment Act (ARRA).

The bill as amended 5/28/10 substantially overhauls the measure's prior provisions. The bill now addresses in a comprehensive statement the implementation of Proposition 1A, the use of federal ARRA high speed rail funds, high speed rail accountability and oversight, the biennial business plan and the peer review group.

The bill gives the Governor the power to appoint five additional employees to the Authority, who would be exempt from civil service, to serve the executive staff of the Authority at the pleasure of the executive director.

The bill states legislative intent to appropriate \$230.5 million in bond funds in the 2010-11 Budget Act as a 1-1 match for federal ARRA funds and requires the Department of Finance (DOF) to report to the Legislature when federal funding reimbursement is received. Requires the costs of project construction in a corridor to be adjusted in year-of-expenditure dollars.

Requires \$2.25 billion in federal ARRA funds, upon appropriation, to be used consistent with the bond act and the provisions of the bill. Requires the Authority to work with the FRA to create a plan to expend the federal funds and submit a copy of the plan to the DOF and legislative committees, and references timelines and dates for the completion of environmental reviews, obligation and construction associated with the federal funds.

Repeals and reenacts a revised business plan requirement, adding reporting on potential costs of a minimum revenue guarantee and payment sources, all ARRA requirements, and a long-term spending plan for preconstruction activities.

Repeals and reenacts requirements for a peer review group with the same membership as current law, declaring that it is not a state or local body for purposes of open meeting act requirements.

Creates the Office for Project Controls and Risk Management in the Authority, reporting to the chief executive of the Authority.

Requires the Governor to appoint an inspector general to oversee the fiscal functions of the Authority, who reports annually to the Authority and the Legislature.

Requires the Auditor to perform periodic audits on the use of ARRA funds, the same as that for the use of state bond funds.

Bill history/status: Approved by Assembly Transportation Committee 13-0 on 4/27/09; approved by Assembly 72-3 on 5/18/09. Sent to Senate and referred to Senate Environmental Quality Committee; hearing pending. Author's amendments on 8/17/09 to delete former contents and change subject matter. Re-referred to Senate Committee on Rules. Referred to Senate Transportation and Housing Committee 2/11/10. Tentatively scheduled for June 22, 2010 hearing.

Current approved position: Support

Recommended Position: Monitor and work with author

3. **AB 1375 (Galgiani) As Amended 5/24/10** – *Department of Railroads. Creates a Department of Railroads within the Business, Transportation and Housing (BTH) Agency to develop and administer the high-speed train project as the successor agency to the Authority for most of the purposes and duties of the Proposition 1A bond act and for other activities related to the project. Repeals and reenacts the California High Speed Train act for purposes of restructuring the respective roles of the Authority and the new Department of Railroads.*

The bill provides that the Authority would continue in existence to advise the BTH Secretary and Director of the Department of Railroads concerning high-speed rail matters, to annually adopt a 6-year high-speed train program for submission to the Governor and the Legislature, review and adopt the annual report of the new department and to establish the compensation of exempt executive employees of the department added by the bill. The Authority also would request and review reports of the department on high-speed train issues that the Authority determines require special study. Staff support for the Authority would be provided by the department. The Authority would constitute the department's "governing authority" for purposes of resolutions of necessity for property acquisition. The bill declares and clarifies that nothing in the proposed changes in the structure or duties of the Authority shall require a reconstitution of the existing membership of the Authority.

The new Department of Railroads would succeed to most of the current powers and duties of the Authority and would be administered by a director appointed by the Governor. The Governor would also appoint up to 10 exempt executive employees to staff the department, who would serve at the pleasure of the director. The

department would submit an annual report on the progress of the high-speed train program to the Authority for adoption and subsequent submittal to the Legislature. The bill makes the department the successor agency of the Authority for purposes of Proposition 1A and related statutory requirements for the development, construction and operation of the HST system and the broad range of activities associated with those responsibilities.

The bill authorizes the department to adopt and administer rules and regulations on the exercise of its powers and duties in accordance with the Administrative Procedure Act, describes the department's rights-of-way and property acquisition, management and disposition authority and, authorizes the employment of in-house legal counsel. The department would inherit and perform the responsibilities, liabilities and obligations of the Authority, and all current employees, other than the executive director, would become employees of the department. The bill prescribes a process for the transition of the position of executive director of the Authority to the director of the department.

The latest amendments (5/24/10) clarify that the Authority's power and use of eminent domain provisions are the same as those in current law and are not changed or affected by the proposed bill.

Bill history/status: Approved by Assembly Transportation Committee 9-4 on 4/27/09; referred to Assembly Appropriations Committee. (Pending in Appropriations Committee at request of Assembly Speaker). Approved by Assembly Appropriations Committee 12-5 on 1/21/10. Approved by Assembly 42-20 on 1/27/10 and sent to Senate. Referred to Senate Transportation and Housing Committee 2/11/10.

Current approved position: Monitor

4. **AB 1747 (Galgiani) As Amended 4/14/10** -- *Job creation as a contract award factor. Authorizes the Authority to consider the creation of jobs in California when awarding major contracts, including those for purchasing high speed trains and supplies.*

The bill would add to the Authority's current powers and duties permission to consider, to the extent permitted by federal and state law, the creation of jobs in California when awarding major contracts, including, but not limited to, those for purchasing high-speed trains and related equipment and supplies. The bill is permissive; it allows but does not require the Authority to utilize California job creation as a contractual criterion.

The bill was amended 4/14 /10 to encompass the current provisions and now is essentially identical to the author's earlier AB 733 in 2009, a measure that was overwhelmingly approved by the Legislature but vetoed by the Governor. The veto

message noted the merits of the measure but stated that it could result in unnecessary additional costs and delays and jeopardize the success of the project.

Bill history/status: Introduced 2/8/10; referred to Assembly Transportation Committee. Approved 13-1 on 4/5/10; referred to Appropriations Committee and approved 15-1 on 4/21/10. Sent to Assembly Floor and approved 66-0. Referred to the Senate; pending assignment in Rules Committee.

Current approved position: None

Recommended position: **Monitor**

5. **AB 1830 (Jones—formerly Galgiani) As Amended 6/1/10** – *Rolling stock purchases. Requires the Authority to make every effort to purchase rolling stock and related equipment that are manufactured in California.*

The bill adds a requirement that the Authority shall make every effort to purchase high-speed train rolling stock and related equipment that are manufactured in California, consistent with federal law and any other applicable provision of state law.

The bill was amended 6/1/10 to change the author from Galgiani to Jones.

Bill history/status: Introduced 2/11/10 re electrical restructuring subject matter; amended to high-speed train provisions and referred to Assembly Transportation Committee 3/18/10. Approved 12-2 on 4/5/12 and referred to Appropriations Committee. Approved by Appropriations 12-4 on 4/21/10 and sent to Assembly Floor; pending on Assembly Floor.

Recommended position: Monitor

6. **AB 2121 (Harkey) As Amended 5/28/10** – *Requires the Authority to annually adopt and submit to the Legislature and Governor a 6-year high-speed train program, and annually report on the progress made on the high-speed train program and on a detailed financing plan to pay for the construction of the high-speed train network.*

Section 1 of Article 16 of the California Constitution provides, among other things, that after passage of a bond act by state voters the Legislature may reduce the amount of the debt authorized by the bond law, provided that the reduced debt amount is not less than the amount of debt already contracted at the time of the legislated reduction.

The bill as introduced reduced the amount of bond indebtedness authorized by Proposition 1A to the amount of debt contracted as of January 1, 2011. Therefore, the high-speed train project would not have access to further state bond proceeds without a subsequent repeal or change to the proposed debt restrictions. The lack of state funding and the resulting inability to match federal and other funding sources,

likely would terminate activities toward the development of the high-speed train system in the state.

The bill was amended by the author to no longer affect high speed train bonds or the financing of the HST project. Author's amendments replaced the original provisions of the bill with all new language requiring the annual submittal of a 6-year high-speed train program and an annual project progress report to the Legislature. The new provisions are very similar to some of the reporting requirements proposed in AB 1375, as the latter measure was approved by the Assembly and currently pending in the Senate.

The latest amendments (5/28/10) clarify the contents of the proposed annual report, due December 1st, including progress on each segment, a baseline and projected budget for capital outlay and support for each segment, expenditures to date, a comparison of the current and projected timeline and milestones achieved for each segment, and a detailed financial plan for financing the project.

Bill history/status: Introduced 2/18/10; referred to Assembly Transportation Committee 3/4/10. Approved by Transportation Committee 13-0 on 4/27/10 and amended 4/28/10 to delete original provisions and incorporate new reporting subject matter. Placed on Appropriations Committee Suspense File 5/12/10; amended and approved 17-0 on 5/28 and sent to Assembly Floor; pending on Second Reading File.

Current approved position: Oppose

Recommended position: Monitor

7. **SB 409 (Ducheny) As Amended 1/26/10** – *Rail connectivity plans and HSRA activities. Formerly, created a Department of Railroads in the Business, Transportation and Housing Agency, responsible for high-speed rail and several other current state rail programs. Current language places the Authority within the Business, Transportation and Housing Agency (BTH), requires Senate confirmation of the Governor's appointees to the board, requires annual CTC approval of an Authority funding plan, and requires BTH to prepare 5-year rail connectivity plans.*

The re-drafted measure eliminates all of the original language related to the creation of a Department of Railroads that would have included the Authority, the Caltrans Division of Rail and certain rail functions of the Public Utilities Commission. The bill was stripped of those restructuring provisions before leaving the Senate. The new/current version of the bill instead places the Authority within the Business, Transportation and Housing Agency (as a stand-alone entity) and makes the Governor's five appointments to the Authority Board subject to confirmation by the State Senate.

The bill requires the BTH Secretary to prepare and submit by September 2011 a 5-year Strategic Rail Connectivity Plan for the state that would focus on linkages and feeder opportunities between high-speed and conventional intercity rail, commuter rail and rail transit. The plan would include information on the planning, capital investments and right-of-way needs of passenger rail lines in connection with highway system improvements needed to accommodate expanded rail services. The bill also requires plan updates and follow-up reports every five years. For projects subject to approval by the California Transportation Commission, the commission would have to determine that the projects are consistent with the rail plan.

The bill requires that the Authority must annually submit to the commission for approval, a funding plan describing the need for high-speed rail investments during the next fiscal year and the amount of bond sales needed to accommodate those investments.

Bill history/status: Heard in Senate Transportation and Housing Committee as an information item on 4/14/09. Rule waiver granted 5/28/09 allowed bill to be heard in policy committee after bill action deadlines. Approved by Senate Transportation and Housing Committee 10-0 on 6/9/09. Referred to Senate Appropriations Committee; set for hearing 7/23/09 pending rule waiver approval. Waiver granted; bill heard and placed on Senate Appropriations Committee Suspense File on 7/23/09. Approved by Senate Appropriations 13-0 on 8/4/09. Approved by Senate 32-0 on 1/28/10; sent to Assembly and referred to Transportation Committee.

Current approved position: Monitor

- 8. SB 455 (Lowenthal) As Amended 4/16/09 – Operations and duties of the High Speed Rail Authority.** *Makes numerous conforming changes to statutory provisions and adds specific references to the Authority in statutes governing property acquisition activities and eminent domain. Adds additional Phase 1 project selection criteria and requires Senate confirmation of Governor's Board appointees. Requires the Authority to prepare an overall project schedule on a quarterly basis, approve a quarterly contract status report, and approve all contract amendments at board meetings.*

The bill proposes many technical and conforming changes to the Authority's property acquisition powers and incorporates several changes to law regarding property management as suggested by the Authority's legal counsel. The bill clarifies that the Authority has independent authority parallel to that of Caltrans in these property acquisition, management and disposition activities and is not under the general property management scheme administered by the Department of General Services for other agencies.

The bill also makes several author-initiated substantive changes to the Authority and its operations: a) the Governor's 5 appointees to the Authority would be subject to Senate confirmation (prospectively); b) the Authority would have to consider

additional project selection criteria for investments in Phase 1 of the HST project—including access to railroad stations and terminals, improvements to travel times, service reliability, safety, improved connections between the San Joaquin Valley and southern California and the Bay Area, etc., or some combination of them; c) the Authority would have to prepare an overall project schedule with delivery milestones and related information and present the report quarterly to the board and the Legislature; d) the board would have to approve quarterly a written report on the status of contracts for the previous quarter, and submit the reports to the Legislature; and e) the board would have to formally approve all proposed amendments to contracts, including contract change orders, accompanied by a written report explaining the changes.

Bill history/status: Approved by the Senate Transportation and Housing Committee 10-1 on 4/22/09; approved by Senate Appropriations Committee 9-4 on 5/27/09; Approved by Senate 32-5 on 6/2/09. Sent to Assembly. Approved by Assembly Transportation Committee 10-4 on 6/29/09; approved by Assembly Appropriations Committee 11-5 on 7/15/09. Referred to Assembly Floor Third Reading File; placed on Inactive File on 7/24/09.

Current approved position: Monitor

9. **SB 964 (Alquist-Steinberg) As Amended 4/22/10** – *High speed rail workforce development. Requires the Authority to contract with the Employment Development Department to develop a labor market assessment of the workforce, skills and education needed to construct operate and maintain the HST system, and to develop options for workforce training programs to ensure the availability of the necessary workforce and skills.*

The bill directs the Authority to execute a contract with the Employment Development Department (EDD) to collaboratively develop a labor market assessment of the workforce needs of the high-speed train project and assess the labor market's ability to supply the necessary skills, education and training to develop, construct, operate and maintain the train system. EDD would also develop a recommended strategy to ensure that workforce programs are available to facilitate the availability of a skilled, in-state workforce to carry out HST project tasks and responsibilities.

The bill requires the Authority and EDD to jointly form an advisory committee to advise the two agencies on the availability and potential availability of skilled labor, by region, to construct, operate and maintain the high-speed train system. The advisory committee would consist of the HSRA, the state's higher education institutions (all three systems), California Workforce Investment Board, State Department of Education, labor organizations, State Employment Training Panel and others as determined by the Authority.

The workforce assessment would have to be submitted to specified committees of the Legislature by January 1, 2012 and be incorporated in the Authority's biennial

business plan. The bill appropriates \$500,000 from the Proposition 1A bond fund to pay for the required workforce assessment and development activities.

Bill history/status: Introduced 2/18/10; dual-referred to Senate Transportation and Housing Committee and Education Committee. Approved by Transportation and Housing 6-2 on 4/20/10; referred to Education Committee 4/22/10 and rereferred to Senate Appropriations Committee 4/26/10; placed on Appropriations Suspense File. Approved 7-2 on 5/27/10 and sent to Senate Floor; pending on Third Reading File.

Current approved position: Monitor

Recommended position: Support

10. SB 965 (DeSaulnier) As Amended 4/7/10 – Federal high-speed rail funds.

Authorizes the High Speed Rail Authority to expend federal ARRA funds awarded to it for development of projects on the high-speed train system, upon legislative appropriation and in compliance with Proposition 1A. Requires a report to the Legislature of any cooperative agreement with the FRA and annual project progress reports to the Legislature. Exempts from the reporting requirements any California-awarded ARRA funds made available to the Transbay Joint Powers Authority.

The bill authorizes the Authority's expenditure of any federal high-speed rail funds for purposes of developing projects along the high-speed rail network. The bill requires the Authority to take whatever actions are necessary to obligate and expend the federal funds to meet all applicable federal deadlines, to maximize job creation in the state as quickly as possible, to expedite completion of infrastructure projects that improve rail-highway safety, mobility and performance, and to replace state bond funds with federal funds to the extent possible to maximize the effectiveness of state funds.

The bill requires the Authority, within 60 days of enactment of the bill or finalization of a cooperative agreement with the federal government for the use of the ARRA funds, whichever is later, to submit to the Legislature and Legislative Analyst an adopted expenditure plan for the federal funds with specified progress components and financial information. The bill also requires the Authority to submit annually a project progress report with specified financial baseline and project progress information, schedules, milestones and any deviations from the baseline.

The bill provides that if ARRA funds are made available to the Transbay Terminal project from the state's grant of ARRA funds, that project is not subject to the bill.

Bill history/status: Introduced 2/5/10; referred to Senate Transportation and Housing Committee; approved 8-0 on 4/13/10. Referred to Senate Appropriations; set for hearing 4/26/10. Approved 8-1 on 4/26/10 and sent to Senate Floor. Approved by Senate 26-8 on 4/29/10; sent to Assembly. Referred to Assembly Transportation Committee on 5/13/10.

Current approved position: Monitor

